

**FLATHEAD COUNTY BOARD OF ADJUSTMENT  
MINUTES OF THE MEETING  
APRIL 6, 2021**

**CALL TO ORDER  
6:01 PM**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:01 p.m. at the 2nd Floor Conference Room of the South Campus Building, 40 11th Street West, Suite 200, Kalispell, Montana. Board members present were Ole Netteberg, Gina Klempel, Tobias Liechti, Cal Dyck and Roger Noble. Mark Mussman, Donna Valade, and Laura Mooney represented the Flathead County Planning & Zoning Office.

There were 7 members of the public in attendance at the meeting and members of public in attendance over Zoom.

**APPROVAL OF  
MINUTES  
6:02 PM**

Klempel motioned, seconded by Liechti, to approve the February 2, 2021 minutes as written.

The motion passed unanimously by quorum.

**PUBLIC COMMENT  
*(Public matters that are  
within the jurisdiction of the  
Board 2-3-103 M.C.A)*  
6:02 PM**

None

**DONALD SCOTT DAVIS  
(FCU-20-16)  
6:03 PM**

A request by Donald Scott Davis for a conditional use permit for a manufactured home park that will include seven (7) spaces to be located at 16, 20, 24, 28, 32, 36 and 40 Davis Court, Kalispell MT within the Willow Glen Zoning District. The property is zoned R-5 (Two-Family Residential) and the total acreage involved in the request is approximately 2.06 acres.

**STAFF REPORT  
6:03 PM**

Donna Valade reviewed the Staff Report FCU-20-16 for the board.

**BOARD QUESTIONS  
6:08 PM**

None

**APPLICANT  
PRESENTATION**  
**6:08 PM**

Donald Scott Davis, the applicant, explained he was there to get the conditional use permit (CUP). He had yet to work with an engineer because he wanted to know what he would be permitted to do. He discussed the process of development on the property and the hoops which he had been through. He discussed talking with the Evergreen Water Sewer, the fire chief, and other agencies. He discussed options which some of the agencies had presented as alternative options to obstacles of the project. He wanted to get a CUP in order to go to the next step, which would be subdivision review.

**PUBLIC COMMENT**  
**6:12 PM**

Cindy Murray, the general manager of Evergreen Water District, made it very clear that, during her tenure as general manager for the last 3 years, she had never been in any sort of contact with Mr. Davis. The first and only correspondence took place on April 1 2021, when the surveyor sent a copy of the proposed plans to them. The plans did not meet the requirements for the district. They had a PE stamp on them which had not been signed or dated. The plans were not reviewed because it required a fee which had not been received. She was concerned that they had been misrepresented by ideas discussed by Mr. Davis and, while Mr. Davis may have other ideas on how he can address the issues, there were obstacles and he would not have service from the district. She asked the board, if they considered approving this, they would condition it to come into compliance with Evergreen Water and Sewer.

Wayne Everett, 34 Shady Lane, spoke in opposition of the application. He discussed ownership and development of the area. He had issues regarding the staff report and pointed out that the proposal would not be able to accommodate subdivision regulations in regards to road conditions, minimum lot size, and class of mobile homes. He also discussed previous violations on the property. He was concerned about a lack of adequate water supply for fire suppression. He asked that this CUP be denied until these issues and other violations are rectified.

Ben Covington, Fire Marshall with Evergreen Fire, wanted to clear things up. He said there was not an adequate water source and he had never said an 8,000 gallon tank was doable. He had discussed with the applicant what subdivisions had done in the past but also emphasized that retrieving water out of the creek was not an option for this subdivision. He was not informed about what was going on and had to talk with Donna to try and get more information. Approval could not be based on a candid conversation but was a written approval.

**APPLICANT REBUTTAL**  
**6:46 pm**

Davis clarified that Evergreen Water and Sewer had told him there was not enough water to supply the Fire Department with adequate water supply to put out residential fires. He was told that there was not enough water to put out stick buildings but could put out mobile home fires. He stressed the point that there was a large trailer park nearby.

He addressed Covington's concerns and said it had been a candid conversation in which he had tossed around ideas about drilling a well and/or putting an 8,000 gallon tank. He reiterated that there were ways to go around the obstacles, which would be a part of the subdivision review. He discussed some of his ideas but said, at this point, they were all just ideas and would be solved after going through subdivision review.

He addressed the presentation by Everett and said the subdivision had been drafted up by engineers and the conditional use permit had nothing to do with the engineered site plan.

If information was missing, he asked the board table the application so he could get that information. He said he was told directly by Andy Hyde what he could do. He asked the question of, if they couldn't get water out there, why were there a lot of houses out there?

**BOARD DISCUSSION**  
**6:53 PM**

Noble asked for an explanation from staff as to the background of a Conditional Use Permit (CUP) permit and its approval process.

Valade explained the process this application had been through and addressed the negative findings regarding water and fire suppression.

Klempel asked if there had been any correspondence between staff and Andy Hyde, the Engineer from Evergreen Water and Sewer and whom Davis said had told him what he would be allowed to do. Valade said she had not.

Dyck asked if all the negative findings had to be addressed during a subdivision review. Valade said the CUP addressed if the applicant had enough room to do what was proposed.

Dyck explained that the BOA had to stay within the boundaries of their jurisdiction. They would address the issue of what was being proposed and would be allowed on this property, with subsequent conditions. The CUP would

be a moot point if it did not acquire the other approvals needed.

Netteberg pointed out there were many trailers to the north and to the east of the subject property. It would be hard to say “no more trailers”. He felt that there was a lot to look at when looking at the history of the property and everything that was involved.

Klempel asked if the board felt the findings were correct. They agreed that they were.

**MAIN MOTION ON TO  
ADOPT F.O.F.  
(FCU-20-16)  
7:02 PM**

Klempel made a motion, seconded by Liechti, to accept Staff Report FCU-20-16 as Findings-of-Fact.

**ROLL CALL VOTE TO  
ADOPT F.O.F.  
(FCU-20-16)  
7:03 PM**

Motion passed unanimously on a roll call vote.

**BOARD DISCUSSION  
7:04 PM**

Dyck asked the board to look at the conditions to see if they were in agreement with them.

Noble asked Evergreen Water and Sewer District about condition #5 that stated they have to attain approval. He asked Murray about the process of approval with Evergreen Water and Sewer. She said that the plan, once properly submitted, would be evaluated by Mr. Hyde (who had not evaluated the plan yet) and also by the district. A recommendation would be made to the board and then board would approve or not approve the plan in a public meeting.

Noble wanted to modify the condition to state that “*A set of engineering plans will be submitted and reviewed by the Flathead County Water and Sewer District #1-Evergreen and upon determination will either be approved or denied by the Board of Directors*”.

Noble said the county had determined that the application was complete but there were a lot of things that Davis had to go through before this could even come close to being developed. It was not their responsibility to evaluate things that would be done at the subdivision review. The BOA had to stay in their lane based on what their rules and mandates were.

**MOTION TO ACCEPT  
CONDITIONS  
(FCU-20-16)**

**7:07 pm**

Noble made a motion, seconded by Klempel, to accept conditions of FCU-20-16, as modified.

**BOARD DISCUSSION**

**7:07 pm**

None

**ROLL CALL TO  
ACCEPT CONDITIONS  
(FCU-20-16)**

**7:07 pm**

Motion passed unanimously on a roll call vote.

**MOTION TO APPROVE  
(FCU-20-16)**

**7:08 pm**

Dyck made a motion, seconded by Liechti, to approve FCU-20-16, as amended.

**ROLL TO APPROVE  
(FCU-20-16)**

**7:08 pm**

Motion passed unanimously on a roll call vote.

**MARK & TINA  
GILLETTE  
(FCU-21-01)**

**7:11 PM**

A request by Mark & Tina Gillette with technical assistance from Sands Surveying, Inc. for a conditional use permit to construct four (4) three-plex apartment buildings on property located at 236 Jewel Basin Court, Bigfork, MT within the Bigfork Zoning District. The property is zoned B-3 (Community Business) and the total acreage involved in the request is approximately 1.00 acre.

**STAFF REPORT**

**7:11 PM**

Laura Mooney reviewed the Staff Report FCU-21-01 for the board.

**BOARD QUESTIONS**

**7:13 PM**

None

**APPLICANT  
PRESENTATION  
7:13 PM**

Eric Mulcahy with Sands Surveying, 2 Village Loop, represented the applicants. They had reviewed the staff report and were agreeable to all the conditions, with the exception to Condition #4 regarding parking. They had provided a site plan with 27 spaces, which they were only required to provide 4. At the BLUAC meeting, they had pointed out that there needed to be ADA spaces available. After doing research, 2% of the parking needed to meet ADA compliance, so he reconfigured the spaces to have 26 spaces with 1 being ADA compliant. He requested that the condition state that they comply with the minimum parking standards. That would give him a little more flexibility to accommodate with ADA compliance standards.

**BOARD QUESTIONS  
7:15 PM**

Klempel asked how he would address the ADA standards specifically. Mulcahy said that he understood it to be 2% of the parking, which would be 1 space. Compliance of the structure would be addressed by the designer/architect and at the state level.

**PUBLIC COMMENT  
7:16 PM**

None

**BOARD DISCUSSION  
7:17 PM**

Klempel discussed the last traffic report that had been done in the area. She discussed ingress and egress off of Hwy 83. She was concerned, along with BLUAC, that there needed to be another traffic study. She questioned the accuracies of the traffic counts by the DOT.

Dyck was concerned, along with BLUAC, that there should be a condition addressing that the project needed to be reviewed by Bigfork Water and Sewer. Dyck felt they needed to meet compliancy in whole. They were taking lots that were designed for business and putting homes in, which he felt would have a significant impact on the infrastructure.

Mussman said this property was zoned B-3 when it was subdivided. Multi-family dwellings, according to Institute of Traffic Engineers, generated 6.7 vehicle trips per unit, which was less than a single family residence. He discussed the permitted uses which could have occurred on the property, including shopping malls, movie theatre, etc. This subdivision was reviewed (when it was zoned B-3) and approved while anticipating a lot more traffic than anticipated, especially within peak hours, with what multi-family units generated. Subdivisions required an individual traffic study but a CUP did not.

Klempel felt that one of the biggest issues was that Bigfork was seasonal. A lot

of businesses ran on a seasonal principal and that changed things as well. Mussman said, to keep in mind, there was a housing shortage in the valley and this proposal would add 12 more units which would add more availability.

Noble understood the traffic situation but, as mentioned, it was a multi-family unit with 12 additional units. He was concerned about having a playground or fenced area for children that would reside there. It was not required by the regulations but felt there should be a designated playground area or fencing. Klempel agreed.

Liechti asked what the purpose behind condition #4 and the 27 parking spaces. Staff said it was based on the site plan and what was in the regulations. They discussed the logistics.

Liechti felt condition #12 was redundant to condition #4. He confirmed that it would have to go through subdivision review, which would require approval for water and sewer. He felt they should strike condition #12 and keep condition #4 as written.

Mulcahy said they could keep the parking spaces at 27 and he would squeeze in the handicap parking space. Dyck confirmed that they would make sure it was ADA compliant, at the state level, during the building review.

Noble asked Mulcahy if he would consider designating some space for a playground area since they were catering to families. He felt it would be a benefit to the development. Mulcahy said they could have a fenced area as a condition of approval. Noble felt that a development this size should have some parkland. Noble asked if it was a requirement and the director replied not for this particular development.

Noble wanted to add a condition that would require parkland or a fenced playground area.

**MAIN MOTION ON TO  
ADOPT F.O.F.  
(FCU-21-01)  
7:32 PM**

Noble made a motion, seconded by Klempel, to accept Staff Report FCU-21-01 as Findings-of-Fact.

**ROLL CALL VOTE TO  
ADOPT F.O.F.  
(FCU-21-01)  
7:33 PM**

Motion passed unanimously on a roll call vote.

**BOARD DISCUSSION  
7:33 PM**

Dyck reiterated that Noble had requested that a condition be added to require a fenced playground area.

**MOTION TO ADD  
CONDITION #12  
7:33 PM**

Noble made a motion, seconded by Klempel, to add condition #12 to state:  
*12. A playground area will be provided with a fence around it.*

**ROLL CALL TO ADD  
CONDITION #12  
7:33 PM**

Motion passed on a 4-1 roll call vote. Liechti dissented.

**MOTION TO APPROVE  
(FCU-21-01)  
7:34 PM**

Noble made a motion, seconded by Netteberg, to approve FCU-21-01 as amended.

**ROLL CALL TO  
APPROVE  
(FCU-21-01)  
7:34 PM**

Motion passed on a 4-1 roll call vote. Klempel dissented

**OLD BUSINESS  
7:35 PM**

None

**NEW BUSINESS  
7:35 PM**

None

**ADJOURNMENT  
7:35 PM**

The meeting was adjourned at approximately 7:35 pm on a motion by Dyck. The next meeting will be held at 6:00 pm on May 4, 2021.



  
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Cal Dyck, Chairman

  
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Angela Phillips, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED 54/2021